

AMENDED IN SENATE JULY 16, 2009

AMENDED IN SENATE MAY 27, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1551**

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**Introduced by Committee on Utilities and Commerce (Fuentes (Chair), Blakeslee, Buchanan, Carter, Fong, Furutani, Huffman, Krekorian, Smyth, and Torrico)**

March 10, 2009

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An act to amend Sections 26003 and 26011 of the Public Resources Code, and to amend Section 2852 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL’S DIGEST

AB 1551, as amended, Committee on Utilities and Commerce. Energy: program eligibility.

(1) The California Alternative Energy and Advanced Transportation Financing Authority Act established the California Alternative Energy and Advanced Transportation Financing Authority. The act defines the term “alternative sources” to mean the application of cogeneration technology, the conservation of energy, and the use of specified renewable energy sources under 30 megawatts or other sources of energy that reduce the use of fossil and nuclear fuel and are intended primarily to offset part or all of a customer’s own electrical requirements. The authority is authorized to purchase alternative source energy or projects for sale to a specified participating party and to make a loan to a participating party to purchase alternative source energy or projects by entering into various specified instruments including prepayment purchase contracts.

This bill would change the definition of “alternative sources” by deleting the requirement that the energy sources be intended primarily to offset part or all of a customer’s own electrical requirements. The bill would require the authority to enter into a prepayment contract with a participating party only for energy derived from an alternative source to the extent the prepayment is for energy intended to primarily offset part or all of the authority’s or a participating party’s own electrical requirements.

(2) A decision of the PUC adopted the California Solar Initiative. Existing law requires the PUC to undertake certain steps in implementing the California Solar Initiative, defines what is an eligible solar energy system for purposes of the program, and regulates the use of funds under the California Solar Initiative, including ensuring that not less than 10% of the funds for the California Solar Initiative are utilized for the installation of solar energy systems on low-income residential housing, defined to include, among other housing, a multifamily residential complex in which at least 20% of the total units are sold or rented to lower income households and those units are subject to a deed restriction or affordability covenant with a public entity that ensures those units’ affordability for a period of at least 30 years.

~~This bill would additionally include as low-income residential housing for the above purpose a single-family residence sold to a lower income household and a multifamily residential complex with units that are subject to a deed restriction or affordability covenant with a nonprofit housing provider exempt under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation to provide affordable housing to lower income households.~~  
*revise and recast the definition of “low-income residential housing” for the purposes of the California Solar Initiative.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 26003 of the Public Resources Code is
- 2 amended to read:
- 3 26003. As used in this division, unless the context otherwise
- 4 requires:
- 5 (a) “Authority” means the California Alternative Energy and
- 6 Advanced Transportation Financing Authority established pursuant

1 to Section 26004, and any board, commission, department, or  
2 officer succeeding to the functions of the authority, or to which  
3 the powers conferred upon the authority by this division shall be  
4 given.

5 (b) "Cost" as applied to a project or portion of the project  
6 financed under this division means all or part of the cost of  
7 construction and acquisition of all lands, structures, real or personal  
8 property or an interest in the real or personal property, rights,  
9 rights-of-way, franchises, easements, and interests acquired or  
10 used for a project; the cost of demolishing or removing any  
11 buildings or structures on land so acquired, including the cost of  
12 acquiring any lands to which those buildings or structures may be  
13 moved; the cost of all machinery, equipment, and furnishings,  
14 financing charges, interest prior to, during, and for a period after,  
15 completion of construction as determined by the authority; the cost  
16 of the purchase or sale of energy derived from an alternative source  
17 pursuant to subdivision (g) of Section 26011; provisions for  
18 working capital; reserves for principal and interest and for  
19 extensions, enlargements, additions, replacements, renovations,  
20 and improvements; the cost of architectural, engineering, financial,  
21 accounting, auditing and legal services, plans, specifications,  
22 estimates, administrative expenses, and other expenses necessary  
23 or incident to determining the feasibility of constructing any project  
24 or incident to the construction, acquisition, or financing of a  
25 project.

26 (c) (1) "Alternative sources" means the application of  
27 cogeneration technology, as defined in Section 25134; the  
28 conservation of energy; or the use of solar, biomass, wind,  
29 geothermal, hydroelectricity under 30 megawatts, or any other  
30 source of energy, the efficient use of which will reduce the use of  
31 fossil and nuclear fuels.

32 (2) "Alternative sources" does not include a hydroelectric facility  
33 that does not meet state laws pertaining to the control,  
34 appropriation, use, and distribution of water, including, but not  
35 limited to, the obtaining of applicable licenses and permits.

36 (d) "Advanced transportation technologies" means emerging  
37 commercially competitive transportation-related technologies  
38 identified by the authority as capable of creating long-term, high  
39 value-added jobs for Californians while enhancing the state's  
40 commitment to energy conservation, pollution reduction, and

1 transportation efficiency. Those technologies may include, but are  
2 not limited to, any of the following:

- 3 (1) Intelligent vehicle highway systems.
- 4 (2) Advanced telecommunications for transportation.
- 5 (3) Command, control, and communications for public transit
- 6 vehicles and systems.
- 7 (4) Electric vehicles and ultralow-emission vehicles.
- 8 (5) High-speed rail and magnetic levitation passenger systems.
- 9 (6) Fuel cells.

10 (e) “Financial assistance” includes, but is not limited to, either,  
11 or any combination, of the following:

12 (1) Loans, loan loss reserves, interest rate reductions, proceeds  
13 of bonds issued by the authority, insurance, guarantees or other  
14 credit enhancements or liquidity facilities, contributions of money,  
15 property, labor, or other items of value, or any combination thereof,  
16 as determined by, and approved by the resolution of, the board.

17 (2) Any other type of assistance the authority determines is  
18 appropriate.

19 (f) “Participating party” means either of the following:

20 (1) A person or an entity or group of entities engaged in business  
21 or operations in the state, whether organized for profit or not for  
22 profit, that does either of the following:

23 (A) Applies for financial assistance from the authority for the  
24 purpose of implementing a project in a manner prescribed by the  
25 authority.

26 (B) Participates in the purchase or sale of energy derived from  
27 an alternative source pursuant to subdivision (g) of Section 26011.

28 (2) A public agency or nonprofit corporation that does either of  
29 the following:

30 (A) Applies for financial assistance from the authority for the  
31 purpose of implementing a project in a manner prescribed by the  
32 authority.

33 (B) Participates in the purchase or sale of energy derived from  
34 an alternative source pursuant to subdivision (g) of Section 26011.

35 (g) “Project” means a land, building, improvement to the land  
36 or building, rehabilitation, work, property, or structure, real or  
37 personal, stationary or mobile, including, but not limited to,  
38 machinery and equipment, whether or not in existence or under  
39 construction, that utilizes, or is designed to utilize, an alternative  
40 source, or that is utilized for the design, technology transfer,

1 manufacture, production, assembly, distribution, or service of  
2 advanced transportation technologies, or an arrangement for the  
3 purchase, including prepayment, or sale of energy derived from  
4 an alternative source pursuant to subdivision (g) of Section 26011.

5 (h) “Public agency” means a federal or state agency, department,  
6 board, authority, state or community college, university, or  
7 commission, or a county, city and county, city, regional agency,  
8 public district, school district, or other political entity.

9 (i) (1) “Renewable energy” means a device or technology that  
10 conserves or produces heat, processes heat, space heating, water  
11 heating, steam, space cooling, refrigeration, mechanical energy,  
12 electricity, or energy in any form convertible to these uses, that  
13 does not expend or use conventional energy fuels, and that uses  
14 any of the following electrical generation technologies:

15 (A) Biomass.

16 (B) Solar thermal.

17 (C) Photovoltaic.

18 (D) Wind.

19 (E) Geothermal.

20 (2) For purposes of this subdivision, “conventional energy fuel”  
21 means any fuel derived from petroleum deposits, including, but  
22 not limited to, oil, heating oil, gasoline, fuel oil, or natural gas,  
23 including liquefied natural gas, or nuclear fissionable materials.

24 (3) Notwithstanding paragraph (1), for purposes of this section,  
25 “renewable energy” also means ultralow-emission equipment for  
26 energy generation based on thermal energy systems such as natural  
27 gas turbines and fuel cells.

28 (j) “Revenue” means all rents, receipts, purchase payments,  
29 loan repayments, and all other income or receipts derived by the  
30 authority from a project, or the sale, lease, or other disposition of  
31 alternative source or advanced transportation technology facilities,  
32 or the making of loans to finance alternative source or advanced  
33 transportation technology facilities, and any income or revenue  
34 derived from the investment of money in any fund or account of  
35 the authority.

36 SEC. 2. Section 26011 of the Public Resources Code is  
37 amended to read:

38 26011. The authority is authorized and empowered:

39 (a) To adopt an official seal.

40 (b) To sue and be sued in its own name.

1 (c) To issue bonds, notes, bond anticipation notes, and other  
2 obligations of the authority, including, at the option of the  
3 authority, obligations bearing interest that is taxable for purposes  
4 of federal income taxation, for any of its purposes and to fund or  
5 refund the same, all as provided in this division.

6 (d) To determine the location and character of a project to be  
7 financed under the provisions of this division, to lend financial  
8 assistance to a participating party, to enter into loan agreements  
9 with a participating party for the financing of a project including  
10 creating a lien or security interest in the property, to construct,  
11 reconstruct, renovate, replace, lease, as lessor or lessee, and  
12 regulate the same, and to enter into contracts for the sale of a  
13 project, including installment sales or sales under conditional sales  
14 contracts.

15 (e) To fix fees and charges for projects, and interest rates with  
16 respect to loans for projects, and to revise from time to time the  
17 fees and charges and interest rates, and to collect rates, rents, fees,  
18 and charges for the use of, and for a facility or service furnished,  
19 or to be furnished, by a project or part of the project and to contract  
20 with a person, partnership, association, corporation, or public  
21 agency with respect to the project, and to fix the terms and  
22 conditions upon which a project may be sold or disposed of,  
23 whether upon installment sales contracts or otherwise.

24 (f) To employ and fix the compensation of bond counsel,  
25 financial consultants, and advisers as may be necessary in its  
26 judgment in connection with the issuance and sale of any bonds,  
27 notes, bond anticipation notes, or other obligations of the authority;  
28 to contract for engineering, architectural, accounting, or other  
29 services of appropriate state agencies as may be necessary in the  
30 judgment of the authority for the successful development of a  
31 project; and to pay the reasonable costs of consulting engineers,  
32 architects, accountants, and construction experts employed by a  
33 participating party if, in the judgment of the authority, the services  
34 are necessary to the successful development of a project, and the  
35 services are not obtainable from a state agency.

36 (g) To purchase alternative source energy or projects from a  
37 person or entity for sale to a participating party, or to make a loan  
38 to a participating party to purchase alternative source energy or  
39 projects, or to purchase from a person or entity that has contracted  
40 to sell alternative source energy to a participating party the right

1 to receive purchase payments and related rights under that contract  
2 or any related contracts. Notwithstanding any other applicable law,  
3 the authority and a public agency, for purposes of a program or  
4 financing, shall have the power to enter into contractual  
5 arrangements and related agreements or instruments, including,  
6 without limitation, a prepayment purchase contract, lease, loan,  
7 construction, security, operation and maintenance, or other  
8 agreement or instrument, with the authority or with a participating  
9 party, upon the terms and subject to the conditions that may be  
10 necessary or convenient to accomplish the purposes of this  
11 subdivision. The authority shall only enter into a prepayment  
12 contract with a participating party for energy derived from an  
13 alternative source to the extent the prepayment is for energy  
14 intended to primarily offset part or all of the authority's or a  
15 participating party's own electrical requirements.

16 (h) To do all things generally necessary or convenient to carry  
17 out the purposes of this division.

18 SEC. 3. Section 2852 of the Public Utilities Code is amended  
19 to read:

20 2852. (a) As used in this section, the following terms have the  
21 following meanings:

22 (1) *"Affordable housing cost," "affordable rent," and "lower*  
23 *income households" have the same meanings as in those set forth*  
24 *in Chapter 2 (commencing with Section 50050) of Part 1 of*  
25 *Division 31 of the Health and Safety Code.*

26 ~~(1)~~

27 (2) "California Solar Initiative" means the program providing  
28 ratepayer funded incentives for eligible solar energy systems  
29 adopted by the Public Utilities Commission in Decision 05-12-044  
30 and Decision 06-01-024.

31 ~~(2)~~

32 (3) "Low-income residential housing" means any of the  
33 following:

34 ~~(A) Residential housing financed with low-income housing tax~~  
35 ~~credits, tax-exempt mortgage revenue bonds, general obligation~~  
36 ~~bonds, or local, state, or federal loans or grants, and for which the~~  
37 ~~rents of, or sales price paid by, the occupants who are lower income~~  
38 ~~households, as defined in Section 50079.5 of the Health and Safety~~  
39 ~~Code, do not exceed those prescribed by deed restrictions or~~

~~regulatory agreements pursuant to the terms of the financing or financial assistance.~~

(A) *A multifamily residential complex financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which either of the following applies:*

(i) *The rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.*

(ii) *The affordable units have been or will be initially sold at an affordable housing cost to a lower income household and those units are subject to a resale restriction or equity sharing agreement pursuant to the terms of the financing or financial assistance.*

(B) A multifamily residential complex in which at least 20 percent of the total housing units are sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, ~~and the housing units targeted for lower income households~~ households and either of the following applies:

(i) *The rental housing units targeted for lower income households are subject to a deed restriction or affordability covenant with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households that ensures that the units will be available at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or at an affordable rent, as defined in Section 50053 of the Health and Safety Code for a period of at least 30 years.*

~~(C) A single-family residence sold to a lower income households, as defined in Section 50079.5 of the Health and Safety Code.~~

(ii) *The housing units have been or will be initially sold at an affordable cost to a lower income household and those units are subject to a resale restriction or equity sharing agreement, for which the homeowner does not receive a greater share of equity than described in paragraph (2) of subdivision (c) of Section 65915 of the Government Code, with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue*



1 *Code that has as its stated purpose in its articles of incorporation*  
2 *on file with the office of the Secretary of State to provide affordable*  
3 *housing to lower income households.*

4 (C) *An individual residence sold at an affordable housing cost*  
5 *to a lower income household that is subject to a resale restriction*  
6 *or equity sharing agreement, for which the homeowner does not*  
7 *receive a greater share of equity than described in paragraph (2)*  
8 *of subdivision (c) of Section 65915 of the Government Code, with*  
9 *a public entity or nonprofit housing provider organized under*  
10 *Section 501(c)(3) of the Internal Revenue Code that has as its*  
11 *stated purpose in its articles of incorporation on file with the office*  
12 *of the Secretary of State to provide affordable housing to lower*  
13 *income households.*

14 ~~(3)~~

15 (4) “Solar energy system” means a solar energy device that has  
16 the primary purpose of providing for the collection and distribution  
17 of solar energy for the generation of electricity, that produces at  
18 least one kilowatt, and produces not more than five megawatts,  
19 alternating current rated peak electricity, and that meets or exceeds  
20 the eligibility criteria established by the commission or the State  
21 Energy Resources Conservation and Development Commission.

22 (b) In establishing the California Solar Initiative, no moneys  
23 shall be diverted from any existing programs for low-income  
24 ratepayers, or from cost-effective energy efficiency or demand  
25 response programs.

26 (c) (1) The commission shall ensure that not less than 10 percent  
27 of the funds for the California Solar Initiative are utilized for the  
28 installation of solar energy systems on low-income residential  
29 housing. Notwithstanding any other law, the commission may  
30 modify the monetary incentives made available pursuant to the  
31 California Solar Initiative to accommodate the limited financial  
32 resources of low-income residential housing.

33 (2) The commission may incorporate a revolving loan or loan  
34 guarantee program into the California Solar Initiative for  
35 low-income residential housing. All loans outstanding as of January  
36 1, 2016, shall continue to be repaid consistent with the terms and  
37 conditions of the program adopted and implemented by the  
38 commission pursuant to this subdivision, until repaid in full.

39 (3) All moneys set aside for the purpose of funding the  
40 installation of solar energy systems on low-income residential

1 housing that are unexpended and unencumbered on January 1,  
2 2016, and all moneys thereafter repaid pursuant to paragraph (2),  
3 except to the extent those moneys are encumbered pursuant to this  
4 section, shall be utilized to augment existing cost-effective energy  
5 efficiency measures in low-income residential housing that benefit  
6 ratepayers.

O